



State of Washington
Department of Revenue

Excise Tax Advisory

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CAPEHART CONSTRUCTION CONTRACTS

Issued July 22, 1966

Are transactions, pursuant to which the military housing was constructed, shielded from state taxation by sovereign immunity?

A taxpayer entered a Capehart construction contract with a private corporation for the construction by taxpayer (contractor) of housing units upon lands leased by the private corporation. The private corporation was a mortgagor-builder formed to be a mortgagor of the housing. The Federal Government originally drew up the plans for the housing, issued bids, accepted the bills (with a stipulation concerning the formation of a mortgagor-builder corporation) and accepted advances made originally to it to cover certain costs incurred prior to construction. Financing was arranged for by the mortgagor-builder with private capital insured by FHA on its 55 year lease of the real estates upon which the housing was to be constructed.

The Commission held that although the ultimate economic burden of the transaction fell on the United States Government, the Sales Tax was applicable, since the Federal Government was not obligated to pay the seller and was not the buyer within the meaning of RCW 82.08.050. It further observed that the "mortgagor-builder corporation" was not an agent of the United States under the Capehart Act (69 Stat. 651-654) because it served a separate and distinct function from that of the United States. For these reasons and because the Capehart Act evidenced no Congressional intent to immunize such corporations from state taxation, the Commission concluded that the transactions were not immune from state taxation. This position was affirmed in Murray v. State, 62 Wn. 2d 619 (1963), dismissed by the U. S. Supreme Court for lack of a Federal question, 84 U.S. 1910 (1964). Thus the Retail Sales Tax was applied to the contract price under the construction contract.

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

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